

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

M&I Marshall & Isley Bank,)	No. ED96761
)	
Respondent,)	Appeal from the Circuit Court of
)	the City of St. Louis
)	1022-CC02277
vs.)	Honorable Robert H. Dierker, Jr.
)	
KINDER MORGAN OPERATING)	
L.P. "C," et al.,)	
)	
Appellants.)	Filed: February 7, 2012
)	

Kinder Morgan Operating L.P. "C" (KMO) and Kinder Morgan Armory, L.L.C. (KM Amory) (collectively, Kinder Morgan) appeal the trial court's grant of summary judgment granting M&I Marshall & Isley Bank's (M&I's) perfected security interest priority over Kinder Morgan's two warehouse liens.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART

Division One Holds: Between the KMO warehouse lien and the M&I perfected security interest, the trial court erred in granting summary judgment to M&I, in that the 2006 KMO Terminal Agreement was prior in time to M&I's 2007 Security Agreement and thus takes priority under U.C.C. §§ 209(a) & 9-322(a)(1) (2003), and Sections 400.7-209(1), RSMo. (2000) & 400.9-322(a)(1), RSMo. (2001). Between the KM Amory warehouse lien and the M&I perfected security interest, the trial court did not err in granting summary judgment to M&I, in that M&I's 2007 Security Agreement was prior in time to the 2008 KM Amory warehouse lien and M&I did not entrust the coal to Jomico within the meaning of U.C.C. § 7-209(c) and Sections 400.7-209(3), 400.7-503, RSMo. (2001), and thus M&I's perfected security interest takes priority.

Opinion by: Gary M. Gaertner, Jr., J.
Clifford H. Ahrens, P.J., and Roy L. Richter, J., concur.

Attorneys for Appellants: Booker T. Shaw, Stephen A. D'Aunoy, and
Patricia W. Prewitt

Attorneys for Respondent: Clark H. Cole and Sara F. Melly

<p>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</p>
